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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1045

WILLIAM LEIGHTON, a stockholder of Paramount Pictures Corporation, on behalf of himself and all others similarly situated and for and on behalf of Paramount Pictures Corporation,

Petitioner-Plaintiff,

v.

PARAMOUNT PICTURES CORPORATION, BARNEY BALABAN, EDWIN L. WEISL and PAUL E. MANHEIM,

Respondents-Defendants.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS-DEFENDANTS PARAMOUNT PICTURES CORPORATION, BARNEY BALABAN, EDWIN L. WEISL AND PAUL E. MANHEIM

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The Opinions Below

Two opinions were rendered by the United States District Court for the Southern District of New York with respect to the matters raised in this petition. One, by Honorable Thomas F. Croake, United States District Judge, was filed on November 18, 1963, and the other by

Honorable Sidney Sugarman, United States District Judge, was filed on March 2, 1964. Neither opinion is reported but may be found in petitioner's Appendix beginning at pages 7a and 15a, respectively.

An opinion of the United States Court of Appeals for the Second Circuit, Moore, J., was filed on January 12, 1965 and is reported at 340 F. 2d 859.

Jurisdiction

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. §1254(1).

Questions Presented

Although petitioner asserts seven purported questions, we believe that there are no meritorious questions whatsoever raised on the petition.

Statement of the Case

By reason of innumerable factual distortions and legal conclusions found in the "Statement of the Case" in petitioner's brief, it is necessary for us to incorporate in this brief a short resume of the facts.

This action, purportedly a stockholder's derivative suit, instituted by petitioner as a *pro se* litigant, comes before this Court by way of petition for writ of certiorari for the second time. The first petition for a writ of certiorari was filed in March, 1964 and sought review of an order of the United States Court of Appeals for the Second Circuit denying petitioner leave to file petitions for writs of mandamus and prohibition directed to the United States

District Court for the Southern District of New York in connection with orders made in that Court by Honorable Thomas F. Croake and Honorable Thomas F. Murphy, United States District Court Judges. The underlying legal questions raised earlier are substantially identical to the questions now raised. The first petition was denied on April 27, 1964, *Leighton* v. *Paramount Pictures Corporation*, 377 U. S. 919.

This action was instituted in October, 1963. The complaint contained a series of confusing allegations which seemed to be an attempt to state a derivative cause of action for certain wrongdoings on the part of the individual respondents-defendants. Respondents, familiar with the history of petitioner as a *pro se* litigant, moved, by order to show cause, to require petitioner to post security for costs before proceeding further in the action. The order to show cause was signed by Judge Thomas F. Murphy prior to the expiration of respondents' time to move against or answer the complaint and contained a provisions staying proceedings pending the determination of the motion for security and extending the time of respondents to answer the complaint until ten days after either the determination of the motion for security or the posting thereof if ordered by the Court. Subsequently, Judge Thomas F. Croake granted respondents-defendants' motion. An order dated December 23, 1963, directed petitioner to post security in the amount of $2,000 and further provided:

> "ORDERED, that until the filing of the security aforesaid, all proceedings on the part of plaintiff are stayed without prejudice to plaintiff's right to file a motion in the Motion Part of this Court to vacate such stay."

This language was actually proposed in a form of order submitted by the petitioner and adopted by the Court.

Upon failure of petitioner to post security Judge Croake dismissed this action with the following language:

> "ORDERED, ADJUDGED AND DECREED that the within action be and the same hereby is dismissed, without prejudice, however, to the rights, if any, of any member of the class (except the named plaintiff William Leighton) on behalf of whom plaintiff purportedly brought this action."

Subsequent to Judge Murphy's order containing the stay provision, which was signed on October 29, 1963, petitioner made several motions and applications in the District Court and instituted proceedings in the Court of Appeals, ostensibly for the purpose of vacating the stay but also seeking additional and varied relief.

Following the order made by Judge Croake directing the posting of security and staying proceedings, petitioner made a number of additional applications in the Court of Appeals with respect both to the order of October 29, 1963 and the order of December 23, 1963. Finally, on January 22, 1963, the day before the action was dismissed, petitioner made an omnibus motion in the District Court, seeking vacatur of the December 23, 1963 order, an order striking all papers filed by defendants, and an order referring to the Chief Judge of the District Court the alleged misconduct of junior counsel associated with the attorneys for individual respondents.

Respondents thereupon, by order to show cause dated January 31, 1964, moved the District Court to punish petitioner for civil contempt by reason of his violation of the stay provisions of the December 23, 1963 order of

Judge Croake. Notice of the motion was given to petitioner by service of the order to show cause on January 31, 1964. A hearing on the motion was held before Judge Sidney Sugarman on February 4, 1964, at which petitioner attended and was heard extensively by the Court. On March 2, 1964, Judge Sugarman filed an opinion finding petitioner had contumaciously violated the order of Judge Croake dated December 23, 1963, and imposing on him a fine of $800. An order and judgment was entered on March 12, 1964 implementing that decision.

Immediately thereafter the first petition for a writ of certiorari to this Court was filed. In connection with that petition two applications were made to stay the operation of the judgment of contempt, one to Mr. Justice Harlan and another to the Chief Justice. The applications were denied on March 16, 1964 and March 25, 1964, respectively.

Appeals were thereafter taken from (a) the order of December 23, 1963 requiring security; (b) an order of January 22, 1963 denying petitioner's motion to vacate the stay provision of Judge Croake's order and seeking other relief; (c) the order and judgment of January 23, 1964 dismissing this action against petitioner; and (d) the orders and judgment of March 12, 1964 holding petitioner in contempt of court and denying his omnibus motion.

The Court of Appeals for the Second Circuit filed its affirmance in an opinion dated January 12, 1965 and petitioner turns to this Court again.

ARGUMENT

There is no Colorable Question of Law Presented on this Petition

To state this case in its simplest terms, the District Court extended defendants' time to move or answer, ordered petitioner to post security for costs in the amount of $2,000, and stayed all proceedings in the action pending the posting of such security. Petitioner failed to post security and ultimately judgment was entered dismissing the action. Notwithstanding the order staying proceedings, petitioner made a motion seeking various forms of relief totally unrelated to the stay order itself. Respondents moved for an order holding petitioner in civil contempt, and after a hearing the District Court entered such order and fined petitioner $800. Despite petitioner's multitudinous diversionary applications in various courts at every stage of these proceedings, the basic procedure followed below was entirely proper and fully warranted.

Validity of the Order Extending Defendants' Time to Move or Answer

On October 29, 1963, prior to the expiration of the time within which defendants were required to answer the complaint in this action, they obtained an *ex parte* extension of time pursuant to Rule 6(b)(1) of the Federal Rules of Civil Procedure in the order signed by Honorable Thomas F. Murphy as part of the motion for security. Petitioner now contends that the order was invalid because, after it was signed, it was removed from the courthouse while defendants attempted to serve it per-

sonally on petitioner, who is not a lawyer, who worked during the day, and who used his residence address instead of a daytime office address on his papers. He argues that this action put the defendants in default and says he is entitled to judgment accordingly. The argument hardly requires a response. It is abundantly clear that the extension of time for defendants to move against or answer the complaint was fully within the power of the Court to grant, and that the granting of such extension was in no way affected by the necessity of making a difficult service and obtaining an admission thereof prior to the filing of the order with the Motion Clerk.

Validity of the Order Directing the Posting of Security

The order extending the time to move or answer also brought on for argument a motion to require petitioner to post security for costs before launching into extensive proceedings in the action. The motion also sought a stay of proceedings pending the posting of such security. Pursuant to Local Rule 2 of the Civil Rules of the United States District Courts of the Southern and Eastern Districts of New York, Judge Thomas F. Croake made an order requiring petitioner to post security in the amount of $2,000, and staying proceedings on his part, save his right to seek to vacate the order, pending the posting of such security.

The local Rule providing for security in appropriate cases is plainly authorized by Rule 83 of the Federal Rules of Civil Procedure, 6 *Moore's Federal Practice*, page 1328, §54.73 (2d edition); see *Zeth* v. *Pennsylvania Railroad Company*, 7 F.R.D. 612 (E.D. Pa. 1947); 3 Bar-

ron & Holtzof, *Federal Practice and Procedures*, §1198 (Wright edition) and the rule has been frequently exercised. *E.g., Miller* v. *Town of Suffield*, 249 F. 2d 16 (2nd Cir. 1957) *cert. denied*, 356 U. S. 978 (1958). The Court of Appeals in its opinion below held the amount of security required to be a reasonable and proper exercise of the District Court's discretion in the light of petitioner's posture as "an habitual *pro se* litigant whose claims were often conclusory and lacking in legal merit" and there seems no valid reason to further review that discretion in this Court.

The stay of proceedings incorporated in the order requiring security was also an entirely proper exercise of the inherent right of the District Court to administer the proceedings before it. That power has long been recognized by this Court. *Landis* v. *North American Co.*, 299 U. S. 248 (1936).

On January 23, 1964 the action below was dismissed when petitioner failed to post security in accordance with the provisions of the order of December 23, 1963. The dismissal was expressly without prejudice to the institution of an action by any other stockholder. No such action has been instituted.

Validity of the Order Adjudging Petitioner in Contempt

On January 22, 1964 petitioner moved for relief far beyond the vacatur of the December 23, 1963 order directing him to post security. In his motion he sought varied relief completely unrelated to any request to vacate the security order and the stay provisions therein, including an order striking papers filed by counsel for defendants

and seeking to refer to the Chief Judge the propriety of practice of one of the junior counsel. Respondents moved by order to show cause for an order holding petitioner in contempt by reason of his violation of the December 23, 1963 order. Notice of the motion was given to petitioner five days prior to the return day. Petitioner appeared on the return day and extensively argued his position before the Court. After affording this full hearing, the District Court in a careful opinion concluded that petitioner had violated the order of December 23, 1963 and directed petitioner to pay a fine of $800 to the respondents.

There can be no question on the record that petitioner received due notice of the motion citing him for contempt and appeared on the hearing of that motion. The facts of his violation of the stay provision were never contested or put in issue. A fair hearing was afforded petitioner before the District Court. He was not entitled to a jury trial. *Michaelson* v. *U. S.*, 266 U. S. 42 (1942); *In Re Debs*, 158 U. S. 564 (1895); *cf. McCrone* v. *U. S.*, 307 U. S. 61 (1939). The amount of the fine imposed by Judge Sugarman was within his discretion, and the Court of Appeals, in affirming the judgment below, found that he had properly exercised it. There is nothing in the petition to support the need for this Court to further review that discretion.

* * * * *

On all of these subjects, the petition must be viewed with great caution. It is replete with incomplete factual statements and unsupported conclusions and buttressed by inappropriately cited or inapplicable authority. It fails to raise any valid issue, and should accordingly be denied.

CONCLUSION

The petition for a writ of certiorari should be denied in all respects.

Respectfully submitted,

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May 6, 1965